


**OFFICE OF INDEPENDENT BUDGET ANALYST
CITY OF SAN DIEGO
M E M O R A N D U M**

No. 08-1

DATE: January 2, 2008

TO: Honorable Members of the Audit Committee

FROM: Andrea Tevlin, Independent Budget Analyst 

SUBJECT: Charter Revision Proposals

On Monday, January 7, 2008 the Audit Committee will consider revisions to the City Charter proposed by the Mayor's Charter Review Committee. The items for Audit Committee consideration are the proposals for an Audit Committee and a City Auditor.

The IBA has provided the attached reports for Audit Committee review. They include a comprehensive review of the significant research and analysis the IBA has performed on this topic over the last year and a half. The reports include our original review of the Kroll Report, published August 30, 2006 (see pp. 3-9), the IBA's May 17, 2007 report to the Charter Review Committee on Auditor Independence and Audit Committee Issues, and our recent report to the Rules Committee on the final recommendations of the Charter Review Committee (see p. 4).

As we have shown, there are several acceptable models for the City's Audit Organization. The model recommended by the Charter Review Committee is acceptable and is supported by the IBA. We reiterate that Mayoral appointment of the City Auditor is satisfactory in this model because it is paired with legislative appointment of the Audit Committee members and other safeguards for City Auditor independence, including reporting to the Audit Committee and City Council upon appointment. Mayoral appointment of the City Auditor would not be acceptable without these protections. Nor would Mayoral appointment of the citizen members of the Audit Committee provide for the necessary independence of the committee from management. The IBA continues to recommend no management oversight of the Audit Organization, which is a basic tenet of the best practices cited.

Attachments:

1. IBA Report 06-35: Responses to Remedial Recommendations of the City of San Diego's Audit Committee
2. IBA Report 07-55: Auditor Independence and Audit Committee Issues
3. IBA Report 07-102: Charter Review Committee Recommendations



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: August 30, 2006

IBA Report Number: 06-35

City Council Agenda Date: September 6, 2006

Item Number: 601

Item: Responses to Remedial Recommendations of the City of San Diego's Audit Committee

OVERVIEW

In February 2005, the City Council adopted a resolution to retain Kroll, Inc. ("Kroll") to evaluate the investigative reports of Vinson & Elkins and the City Attorney and to make appropriate recommendations to the City Council. At a meeting with SEC officials on March 2, 2005, the City was instructed to complete a thorough investigation into its own finances and develop a plan for remediation. In response to SEC concerns, the City formed an independent Audit Committee on March 8, 2005 consisting of Kroll representatives Arthur Levitt, Lynn Turner and Troy Dahlberg.

On August 8, 2006, the City's Audit Committee presented the Report of the Audit Committee of the City of San Diego that included investigation into the Retirement System and Sewer Rate Structure ("Kroll Report"). As was requested by SEC officials, the Kroll Report provided details of the Audit Committee's investigation and a comprehensive remediation plan to correct the City's internal controls and prevent future control lapses.

On August 24, 2006, the Mayor presented his response to the Kroll Report. The Mayor and his staff carefully reviewed the report, identifying 121 recommended remediations which they organized into 33 different categories. In his memorandum to the City Council dated August 24, 2006, the Mayor indicated that he had directed his staff to begin implementing all of the recommended remediations identified. The Mayor's implementation plan provides brief responses for the 121 identified remediation recommendations and associated fiscal impact estimates for the proposed actions discussed in each response.



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Attachment 1

The IBA has spent the preceding weeks reviewing the report and remediations, as well. In this report, the IBA presents a discussion on several remediations that we believe warrant critical examination prior to wholesale adoption. While the IBA is supportive of the Audit Committee's recommendations and the Mayor's timeline for implementation, we believe that true reform begins with an honest and open exchange of ideas. As the Audit Committee discussed at the August 8th presentation, the City's past practice of suppressing dissent and thoughtful discussion in the interest of expediency was an underlying cause of the challenges the City faces today. Given that admonition, the IBA believes it is critical to carefully consider these remediations in a public forum, discuss the merits of each, and explore possible alternatives. We also emphasize that adoption of the overall strategy should not preclude continuing public discussion and examination as plans evolve and details are developed.

The City must now consider a remediation package that will dramatically alter the way our government is structured. The reforms that are set into place will establish a foundation for the future operation of city government. In time, San Diego will become a blueprint for other municipalities facing the same challenges. The reforms that are considered today should be irrespective of any current elected official or personality; instead, they should focus on establishing a better process by which local government is run, today and in the future.

FISCAL/POLICY DISCUSSION

In general, the remediations proposed in the report represent improved practices in many areas of finance, accounting and management. The IBA has not found any of the remediations to be inappropriate or unnecessary; rather we encourage the adoption of all remediations proposed as part of a total strategy to achieve financial accountability and operational success. In addition, the IBA strongly endorses the Mayor's timeline for individual remediations as well as the broader goal to complete implementation within the next 30 months. This aggressive timeline makes this effort the top priority for the City of San Diego, which is entirely appropriate and necessary.

The IBA supports and is in agreement with the vast majority of the Mayor's plan for implementation of these remediations. With regard to Budget Policies and Financial Reporting, for instance, all of these recommendations are critical to enhance fiscal accountability, and many of the recommendations mirror those made by the IBA in several past reports and memos including our review of the FY 2007 Proposed Budget. Many other recommendations, such as Training, Reconciliation of Accounts, and Personnel, as examples, are clearly procedures and policies that should have always been in place in this organization. The IBA also supports the recommendations under City Funding/SDCERS, some of which are also reflective of past recommendations by this office.

Although the report made 121 recommendations, there is only one recommendation for which our research leads us to believe modifications are warranted. In addition, there are four subjects we will endeavor to clarify or supplement with additional detail or recommendations at this time. The five areas this report will address are:

1. Audit Organization
2. City Council Approval of Interdepartmental Transfers
3. City Council Review Period
4. Internal Hotline
5. Oversight Monitor

Audit Organization

Two of the most significant and fundamental remediations recommended by the Kroll Report are the establishment of an Audit Committee and the creation of the Auditor General position. As recommended in the report, the Audit Committee – which would be separate and distinct from the Kroll Audit Committee that conducted the investigation and produced these recommendations – would be made up of three members, including one Council member and two subject-matter experts appointed by the Mayor subject to Council confirmation. The Audit Committee will have oversight of all of the financial operations that are managed on a day to day basis by the Mayor. The Auditor General, who will be responsible for internal audits and will report to the Audit Committee, would also be appointed by the Mayor subject to Council confirmation.

Together, the two new entities will create an “audit organization,” which will effectively become a new arm to City government. The central role of this arm will be to provide independent oversight and auditing for the accounting and financial reporting functions of City management. While the IBA strongly supports the creation and role of this audit organization, we have concerns over the degree of independence that will be accorded this organization by virtue of the powers of appointment recommended by the Kroll Report.

Independence

Given that the audit organization’s independence will and should be its most distinguishing attribute, we believe it is critical to explore the concept of independence and how to best provide for it in the City’s audit organization. The United States Government Accountability Office (GAO) states that “the audit organization and the individual auditor, whether government or public, should be free both in fact and appearance from organizational impairments to independence.”¹ Further, the Institute of

¹ United States General Accountability Office, *GAO Government Auditing Standards Amendment No. 3, Independence* (Washington DC: United States General Accountability Office, 2002), §3.11.

Internal Auditors (IIA) defines independence as “[t]he freedom from conditions that threaten objectivity or the appearance of objectivity.”²

Thus, when establishing this audit organization the City of San Diego must ensure that the risk of undue influence, either real or perceived, that would impair objectivity and independence should be minimized or eliminated. The greatest risk of undue influence stems from City management, since all of the financial reporting functions and organizational controls, on which the audit organization is to perform its auditing functions, resides with management. Therefore, the key for the audit organization is not independence in the general sense, as in independence from all City officials and entities, but independence from management specifically. As a result, balancing the power of the various branches within the audit organization is not the desired outcome. Rather, the audit organization is itself a balance to the enormous power over financial reporting and internal controls that is rightly vested in management.

Audit Committee

The U.S. Securities and Exchange Commission (SEC) and the Government Finance Officers Association (GFOA) place particular emphasis on the separation of management from audit committee members.³ Also, both the GFOA and the Association of Local Government Auditors (ALGA) strongly recommend that management have no involvement in selecting audit committee members.⁴ Each vests the authority for

² Institute of Internal Auditors, *International Standards for Professional Practice of Internal Auditing* (Altamonte Springs: Institute of Internal Auditors, 2003), http://www.theiia.org/index.cfm?doc_id=2507.

³ “An effective audit committee may enhance the accountant’s independence by, among other things, providing a forum apart from management where the accountants may discuss their concerns.” U.S. Securities and Exchange Commission, *Strengthening the Commission’s Requirements Regarding Auditor Independence* (Washington DC: Securities and Exchange Commission, 2003), 17 CFR Parts 210, 240, 249 and 274, <http://www.sec.gov/rules/final/33-8183.htm>; “An audit committee provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns.” Government Finance Officers Association, *Recommended Practice: Audit Committees (1997, 2002, and 2006)* (CAAFR) (Chicago: Government Finance Officers Association, 2006).

⁴ “The governing body(4) of every state and local government should establish an audit committee or its equivalent...” (4) footnote: “For the purposes of this recommended practice, the term ‘governing body’ should be understood to include any other elected officials (e.g., county auditor, city controller) with legal responsibility for overseeing financial reporting, internal control, and auditing, provided they do *not* exercise managerial responsibility within the scope of the audit.”

Government Finance Officers Association, *Recommended Practice: Audit Committees (1997, 2002, and 2006)* (CAAFR) (Chicago: Government Finance Officers Association, 2006); “Audit committee members shall be appointed by the legislative body and all appointees shall be independent of the local government’s management and administrative service.” Association of Local Government Auditors, *Guidelines and Model Legislation for Local Government Auditors* (Lexington: Association of Local Government Auditors, 1999), <http://www.nalga.org/reports/Legislation>.

establishment of the committee, as well as nomination and appointment of members, in the governing or legislative body of the organization. In a Strong Mayor form of government, the Mayor is a member of the management, and therefore it is not recommended that s/he participate in audit committee appointments.

Additionally, in reviewing other municipalities that use audit committees, the City of Denver is the only municipality that requires the executive to make appointments of private citizens to the committee. The City of Denver has found that this has not allowed for a sufficient level of independence from management. On August 28, 2006, the Denver City Council approved a measure for the ballot to revise the composition of the Audit Committee. This measure is intended to enhance independence by reducing management influence, in the form of appointments, on the Audit Committee.⁵ Finally, we refer to the private sector wherein appointments to an Audit Committee are typically made by the Board of Directors (governing body) rather than by the chief executive (management).

Regardless of the ample evidence to the contrary, some may argue that the current recommendation is sufficient to ensure independence in that a check and balance is provided through Council confirmation of the Mayoral appointees. In theory, the Council would have the ability to reject a Mayoral appointee who either did not meet the required qualifications or who was not deemed to be sufficiently independent from the City's management, in either fact or appearance. While this system does provide a check and balance to ensure some level of independence, it still presents certain challenges. First, the power of Council confirmation is less effective in reality than in theory. Council confirmation proceedings have in the past been little more than a formality, with little or no challenge to the appointee. Secondly, this process only gives the Council one choice: confirm or reject the Mayoral appointee. The selection process whereby candidates are vetted may not be apparent to the public. The public, and very likely the Council, may not know why or how the appointee was ultimately selected. If the appointee is rejected, the same selection process begins again and valuable time is lost.

The Mayor makes all of the financial appointments within the managerial structure, including the CFO, the Budget Director, the Comptroller, and the Treasurer. With 75%

⁵ During a phone conversation on August 15, 2006, the Director of Communications further elaborated that the mayoral appointment of four members, including the chair of the committee, to the six-member audit committee was "problematic." Denis Burckefeldt (Director of Communications, City and County of Denver, Auditor's office), in discussion with Lauren Beresford (Intern, City of San Diego, Office of the Independent Budget Analyst), 15 August 2006; During another phone conversation on August 29, 2006, the Director of Communications alerted the IBA that the Denver City Council had approved a ballot measure to reform the audit committee. Denis Burckefeldt (Director of Communications, City and County of Denver, Auditor's office), in discussion with Lauren Beresford (Intern, City of San Diego, Office of the Independent Budget Analyst), 29 August 2006.

of the appointments to the audit organization made by management as well (the two private citizens on the Audit Committee and the Auditor General), and insufficient checks available to non-managerial officials, the IBA concludes that this proposal does not provide the necessary independence from management to effectively serve the oversight function as envisioned. This proposal is inconsistent with the national guidelines and best practices established by reputable advisory organizations. The fact or appearance of compromised independence in the City's audit organization would eliminate the potential benefits of this body's oversight function. Therefore, the IBA recommends that the City of San Diego require the legislative body to make the two private citizen appointments to the Audit Committee, as endorsed by accepted practices and guidelines.

Drawing from procedures and practices employed in other organizations, the IBA suggests that the City Council appoint a screening committee to take recommendations and applications for the positions, review qualifications, and provide a pool of candidates to the City Council. The screening committee should be convened immediately and be charged to make their recommendations within 60 days of amending the ordinance for the Financial Reporting Oversight Board, consistent with the timeline as proposed in the Mayor's report. Please see Attachment 1 for a sample process to implement this recommendation.

The Kroll Report recommends that the third member of the Audit Committee be appointed from among the City Council Members. The Council Member should serve as a representative of the policy-making body, assisting the committee to identify long-term or pervasive issues within the organization that should be addressed. Additionally, as a layperson, the Council Member may serve to challenge the Audit Committee as a whole to understand the more basic underpinnings of financial and disclosure statements. The appointment of governing body members is recommended by the ALGA as well as the GFOA.⁶ Therefore, we support the Kroll Report recommendation that one Council Member be appointed to the Audit Committee.

We support the Kroll Report recommendation that the Audit Committee should establish a charter, and further recommend that this should include term limits and procedures for removal of committee members. This charter should be approved by the legislative body, the City Council, once drafted.

⁶ "The legislative body shall appoint at least one of its members to serve on the committee." Association of Local Government Auditors, *Guidelines and Model Legislation for Local Government Auditors* (Lexington: Association of Local Government Auditors, 1999), <http://www.nalga.org/reports/Legislation>; "All members of the audit committee should be members of the governing body." Government Finance Officers Association, *Recommended Practice: Audit Committees (1997, 2002, and 2006)* (CAAFR) (Chicago: Government Finance Officers Association, 2006).

Auditor General

With regard to the Auditor General, best practices and guidelines suggest several mechanisms by which an auditor can gain independence. The GAO suggests that audit heads should be made free from organizational impairment primarily by being directly elected or appointed by the legislative body or a governing body. However, s/he also may be free from impairment if that person is appointed by another official, as long as the legislative body confirms the appointment, the appointee reports results and is accountable to the legislative body, and s/he subject to removal by the legislative body.⁷ This is supported by the ALGA, as well.⁸

As recommended by the Kroll Report, the City's Auditor General would be nominated by the Mayor and appointed by a majority vote of the City Council. A 10 year term and removal only by the legislative body or the Audit Committee enhances the Auditor General's independence from management. In addition, the Auditor General would submit reports to the City Council on his/her activities and findings. This model is consistent with best practices and national guidelines in ensuring independence for the Auditor General. In addition, it is not uncommon in the private sector for the executive to hire the internal auditor.

Notwithstanding this support for Kroll's proposal, it is valuable to take this opportunity to review the benefits and detriments of alternative proposals for establishing this position. One alternative is establishing an elected position for the Auditor General. In IBA Report 06-20, we explored this and several other mechanisms by which the City's Auditor and Comptroller could gain the requisite independence from management. It is likely that requiring the Auditor General to be elected would secure the greatest degree of independence. In this case, the establishment of an Audit Committee would probably be unnecessary, as the Auditor General would report directly to the voters of the City of San Diego. Many models for an elected auditor exist, although in most cases the position also has responsibility for treasury and management functions, which the Kroll Report seeks to separate from the internal audit function. The disadvantage to electing an Auditor General is that the position could become highly political. An elected Auditor General

⁷ "... A government audit organization may also be free from organizational impairments for external reporting if the audit organization's head meets any of the following criteria:... c. is appointed by someone other than a legislative body, so long as the appointment is confirmed by a legislative body and removal from the position is subject to oversight or approval by a legislative body, and reports the results of audits to and is accountable to a legislative body..." United States General Accountability Office, *GAO Government Auditing Standards Amendment No. 3, Independence*, (Washington DC: United States General Accountability Office, 2002), §3.30.2.

⁸ "Provide for an 'independent' auditor either through election or appointment by the legislative body or chief executive officer. Appointment or removal of an appointed auditor by a chief executive officer should be subject to legislative approval." Association of Local Government Auditors, *Guidelines and Model Legislation for Local Government Auditors* (Lexington: Association of Local Government Auditors, 1999), <http://www.nalga.org/reports/Legislation>.

would not only serve as an expert in auditing, but would also have to be a politician. As stated by the City of San Diego's current Auditor and Comptroller, this may increase "susceptibility to special interest groups and other politically powerful members within the entity."⁹ For this reason, the City's Auditor and Comptroller found election to be the least desirable method by which to gain independence from management. In addition, it is uncertain whether an elected auditor would possess the same high degree of experience and expertise as that of an appointed auditor, unless the City Charter provided for specific qualifications.

The election of an Auditor General would first require a Charter change, by the vote of the people at an election, and then a subsequent election to choose the Auditor General. This makes the timeframe for implementing an elected position several years out, at the very least. Given the support for the Kroll recommendation throughout the guidelines of reputable advisory groups and in practice nationwide, the IBA recommends that the City of San Diego move forward to establish an internal audit function with the greatest degree of independence possible within the structure of our current City Charter.

Another alternative is to have the Audit Committee appoint the Auditor General. This option was also discussed in IBA Report 06-20, wherein we suggested that the Financial Resources Oversight Board could serve as the appointing authority for this position. A variation on this model is seen in Seattle where the committee, comprised solely of Council Members, has this authority. This model is also seen in the City of San Diego for both the Personnel Director, who is appointed by the Civil Service Commission, and the Executive Director of the Ethics Commission, who is appointed by the Ethics Commission. Although this alternative is worthy of consideration and is illustrated by other systems that could serve as valuable models, best practices and guidelines more consistently support the appointment of the Auditor General directly by the executive, given sufficient checks for the legislative body.

In light of the research discussed above, the IBA supports the report's recommendation that the City of San Diego require the executive to appoint the Auditor General, subject to the confirmation of the legislative body, provided the IBA recommendation for the City Council appointment of Audit Committee members is implemented. Together, these proposals will provide for sufficient independence for the audit organization as a whole.

We furthermore emphasize that the power and responsibility of the City Council's confirmation is significant and should be used with great care and thoughtfulness. We recommend that confirmation hearings serve as a last stage in the interview process for the Auditor General. This public examination should include a process mirroring that used in the nomination phase by the Mayor, including prepared questions in order to

⁹ City of San Diego. *Annual Report on Internal Controls*. (San Diego: Office of the Auditor and Comptroller, 2006), 11.

assess the qualifications and skills of the candidate, and responses by the candidate in open session, prior to a vote.

Final Audit Organization Recommendation

The IBA's recommended model for the audit organization, wherein the Audit Committee is established by the legislative body and the Auditor General is nominated by the executive and appointed with consent of the legislative body, is most consistent with principles of independence and best practices across the nation. The IBA strongly recommends that the City Council adopt this model for the City's audit organization to ensure that, both in appearance and in fact, this organization will entirely fulfill the independent role envisioned.

City Council Approval of Interdepartmental Transfers

On July 31, 2006 the City Council approved an ordinance establishing a policy to reorganize the departments of the City, otherwise known as the Business Process Reengineering (BPR) Ordinance. This ordinance intended to strike a balance between the Mayor's desire to expeditiously implement BPR reforms, and the Council's Charter authority under Section 26 to "change, abolish, combine, and rearrange" the City departments.

The basic provisions of the BPR Ordinance state that prior to implementation of a proposed BPR, the Mayor will provide a report to the Council detailing any departmental or budgetary changes that would result from the BPR, including the reorganization of department, division or board, and any required changes to the Administrative Code or Appropriation Ordinance. The Council then has the discretion, within a specified review period, to hold a public hearing on the BPR and to make a determination to approve or reject the proposal. The review period has been established as five Council meetings or 60 days, whichever comes first. If no hearing is held or determination made within the review period, then the BPR proposal will be deemed approved.

The IBA has expressed concern on several occasions about the Council delegating its Charter authority to allow for BPR implementation. This concern was first noted at the Budget and Finance Committee meeting on June 14 and in Memo 06-10, where the IBA stated that the Council should retain its authority given its interest in the BPR process, and this being the first year under the new form of government. Subsequent IBA reports and memos echoed this sentiment, and issued new concerns over the length of the review period. While we continue to feel that the current process is not optimal with regard to the length of the review period, the remedial recommendations presented in the Kroll Report have brought new focus on the delegation of Council's Charter authority.

Recommendation 20 in Appendix M of the Kroll Report states the following:

Interdepartmental transfers to meet budgetary goals, or for any other purpose, should not be permitted unless approved in advance by the City Council.

While this statement is not addressed in the Mayor's response to the Kroll recommendations, we believe that it substantiates our concern with the BPR Ordinance. The Mayor's BPR process is likely to bring about fundamental reform to the way City departments are organized and operated, and the City Council should have a vested interest in engaging in this process. While the City Council has no authority over the operation or management of City departments, it does have the authority to determine how the City is organized, granted by Charter Section 26. By surrendering this authority, the Council is abrogating one of its sole sources of power.

To look at it from another perspective, it could also be argued that the BPR Ordinance as currently written erodes accountability. Under the current process, the Council is not required to affirmatively approve the reorganization of City departments, or the transfer of dollars, positions or appropriations between departments within the same fund. It is unclear the degree to which the Council can be held accountable if reforms are made without explicit approval. Without having to cast an affirmative vote, there is a greater chance that BPR proposals will not receive the highest level of scrutiny. Quite simply, a non-voting or *de facto* approval imparts less accountability than approval that is achieved by way of an affirmative vote.

Arguably, one of the most apparent conclusions of the Kroll Report is that the City Council has the obligation to fully understand what is being approved. Under the current BPR process, the Council has surrendered its approval without first knowing what is being proposed. Unless Council demands a hearing on each BPR, approval will be *de facto* and will not require a conscientious and affirmative vote. In light of the conclusions reached by the Kroll Report and the current atmosphere at City Hall, we feel that this process moves the City in the wrong direction. The IBA believes that it is not only appropriate but mandatory that the City Council become fully educated on, and cast an affirmative vote to approve or reject, each BPR proposal.

We recommend that the BPR Ordinance be amended to require that each BPR proposal involving changes to the budget, including the restructuring of City departments or the transfer of funds, positions or appropriations between departments, be docketed for Council consideration. To promote expediency yet still allow for docketing flexibility, all BPR proposals should be docketed as soon as possible, but no later than five Council meetings or 60 days from the time that BPR reports are released.

This proposed amendment would do nothing to slow down the implementation process (and in fact may actually speed it up since non-controversial BPRs could be placed on the consent agenda and would not necessarily have to wait for the full review period, as is the case under the current process), and would provide greater oversight and accountability

for the City Council. We believe that this amended process is more in line with the reforms prescribed by the Kroll Report, and moves the City in the right direction by providing enhanced transparency and a higher degree of accountability.

City Council Review Period

The Kroll Report reminds us that the City Council is the governing body that authorizes the City to borrow funds. The investigation showed that the City Council's review of disclosure documents has at times been rushed and perfunctory. Citing the critical importance of the City Council's oversight role, Kroll recommends that the City Council be provided at least two weeks to review substantially completed drafts of a preliminary offering statement before it is asked to vote to approve the final document. The Kroll Report states "if the City Council is to share responsibility for the accuracy of the City's disclosure documents, it is absolutely essential that the Council be given a reasonable opportunity to examine and ask questions about the disclosure documents it is authorizing to be disseminated to the public".

The IBA strongly supports Kroll's recommendation for a 14-day review period for offering statements and the City's CAFR. Acknowledging Kroll's comment that effective oversight cannot be performed without sufficient time for document review, the IBA would further recommend that a 14-day review period be considered for all items scheduled to be heard by the City Council. IBA Report 06-5, issued on January 30, 2006, established policies and procedures for a two week document review period tied to the current requirements established by the City Council docket coordinator. However, current docketing practices regarding the release of information by the City Clerk only provide Council members and their staff with 1 to 3 business days to review items that require City Council action.

It has been our observation that the inevitable pressure to expedite items to the City Council often forces current docketing requirements to be relaxed which in turn compromises an already short review time for elected officials. It should be noted that management and City Attorney review time prior to docketing typically requires three to six weeks. The IBA believes that elected officials require more than 1 to 3 business days to effectively review complex documents and fulfill their oversight responsibility. When the time available does not allow for the normal review process, the period for City Council review should be the last place to cut corners. In light of Kroll's comments and in accordance with the procedural requests made in IBA Report 06-5, we recommend that the Mayor's Office, Council President's Office, City Clerk, and City Attorney work together to develop a plan that would increase the length of the City Council review period for all legislation. We recommend that the procedure be reviewed in six months, and if it hasn't been successful, City Council should consider legislation that would legally require a longer review period.

Internal Hotline

The IBA agrees with the recommendation regarding the establishment of an internal hotline and effective procedures and policies for dealing with whistleblower complaints. We support the Mayor's proposal to establish these policies and procedures by October 2006. The IBA strongly recommends that those procedures should include the Auditor General as a member of the Hotline Committee and that s/he be a designated recipient of a copy of each and every complaint. This would ensure that there is no opportunity for management to prevent proper investigation of any complaint. Therefore, the Auditor-General should be a part of the decision-making process for which complaints are referred to the audit organization and that decision should not be made by management alone.

Oversight Monitor

In assessing the City's ability to implement a remediation plan, the Kroll Report recounts a history of repeated government failures and expresses a lack of confidence that the City can independently follow through with their Remediation Plan. The Kroll Report recommends the appointment of a Monitor to oversee the implementation of and compliance with the remediation plan. It is further recommended that a City Monitor be selected by the Mayor in consultation with the City Council and subject to the approval of the SEC. The Kroll Report provides the following prescription for a City Monitor:

- An independent person of suitable standing, independence and experience
- Complete and unfettered access to all City/SDCERS personnel and records
- Make quarterly reports to the City and the SEC on the City's progress
- Serve a term of no less than three years and be provided with adequate resources
- Provide the SEC with the right, upon request, to expand the scope of the Monitor's duties following consultation with the City.

The Mayor has expressed support for these recommendations and indicated that he is in the process of identifying a Monitor to oversee implementation of the Remediation Plan. In his August 24th memorandum, the Mayor states that the specific scope and duties will be worked out once a City Monitor has been identified. Citing similar unspecified situations in the private sector, the Mayor estimates the cost to be \$3 to \$4 million over the three year period.

Given the considerable estimated expense for a monitor to oversee the City in complying with the SEC and implementing a well defined remediation plan, the IBA recommends that there be more discussion about the specific scope of work and associated costs as soon as possible, and prior to selecting a Monitor. This will enhance the City Council and the public's understanding of the work of an Oversight Monitor and justify the estimated cost associated with it.

Once a comprehensive scope of work for the Monitor has been developed, staff should ensure that a provider is selected in conformance with Charter and Municipal Code requirements for competitive bidding and contracting for services. The contract for a City Monitor should be discussed at a meeting of the City Council or Rules Committee prior to approval. The IBA believes that these recommendations can be expeditiously completed to the satisfaction of the SEC, elected officials and the public.

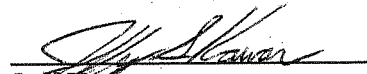
CONCLUSION

The IBA strongly supports the implementation of the suggested remediations in the Audit Committee report as necessary steps to achieve financial accountability and operational success. The Mayor's proposal for implementation is sound and the IBA endorses the aggressive timeline as established by the Mayor. The IBA recommends adoption of that plan, with the modifications described:

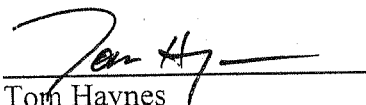
1. **Audit organization:** Adopt the Kroll Report's recommendation for the appointment of the Auditor General, but require the legislative body to make the two citizen appointments to the Audit Committee.
2. **City Council Approval of Interdepartmental Transfers:** Amend the BPR Ordinance to require an affirmative action by the City Council on each proposal that includes any departmental or budgetary changes.
3. **City Council Review Period:** Direct the Mayor's Office, Council President's Office, City Clerk, and City Attorney work together to develop a plan that would increase the length of the City Council review period for all legislation and review effectiveness in six months.
4. **Internal Hotline:** Require the Auditor General to sit on the Hotline Committee and be a designated recipients of each complaint submitted in order to ensure all complaints are investigated properly.
5. **Oversight Monitor:** Have a public discussion on the necessity, scope of work and funding requirements in order to enhance public and City official's understanding of this function.



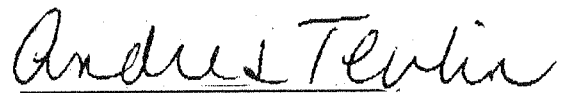
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Jeff Kavar
Fiscal & Policy Analyst



Tom Haynes
Fiscal & Policy Analyst



APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment 1

Sample Audit Committee Appointment Process

Week 1:

Utilizing the Kroll Report and the cited GFOA Recommended Practice, **develop an expanded description of the role of an Audit Committee member** to include: ideal candidate qualifications and experience, expected scope of responsibilities, term of appointment, anticipated frequency of meetings, direct report and public reporting requirements and resources available to the Committee.

Weeks 2 through 5:

- 1) **Solicit applications from qualified candidates** utilizing recommendations from independent individuals, organizations and government oversight entities with affiliations with experts in the realm of government financial reporting and auditing. Notices to the public to apply for the appointments could also be made utilizing local publications, asking that the publications donate this space as a public service. The City should not accept applications from individuals who have made campaign contributions to, publicly supported or opposed, or had other campaign involvement with any of the City's elected officials. Consistent with the recommendations in the Kroll Report for SDCERS Board Members, candidates should be required to complete a detailed application and to affirm the accuracy of all the data therein, and also be subject to a background check.
- 2) **Establish a screening committee to review and select the best qualified candidates for consideration.** For example, a six-member screening committee might be logically comprised of two City Council Members, the City Attorney, CFO, IBA and an outside financial expert selected by the City Council.

Weeks 6 and 7:

The screening committee meets to review applications and select a small pool of candidates judged to be best qualified for the two available appointments.

Week 8:

The City Council convenes a special public meeting to receive personal statements of interest and ask questions of the top candidates.

Week 9:

The City Council votes to appoint two citizens to the Audit Committee.



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: May 17, 2007

IBA Report Number: 07-55

To: Charter Review Committee Members

From: Andrea Tevlin, Independent Budget Analyst

Subject: Auditor Independence and Audit Committee Issues

OVERVIEW

On November 2, 2004, the voters of the City of San Diego passed Proposition F, which amended the City Charter to add Article XV to "test implementation of a new form of governance commonly known as a Strong Mayor form of government". In considering Charter Sections 39 and 265 as they relate to the City Auditor & Comptroller, the City Attorney opined in a memorandum dated January 23, 2006 (attached) that the Office of the City Auditor and Comptroller is now under the Mayor's direct supervision; however, the "Mayor may not limit or impede the authority or duties given to, or required of, this public office by City Charter or ordinance, federal or state law." Given concerns about auditor independence and the oversight role of the City's new Audit Committee, the IBA has prepared a binder of Auditor and Audit Committee documents for the Charter Review Committee. Drawing from the contents of the binder, this report attempts to highlight some of major issues related to auditor independence and the City's Audit Committee to better facilitate Charter Review Committee discussion prior to a public vote to possibly amend the City Charter.

FISCAL/POLICY DISCUSSION

Auditor Independence

The IBA has issued several reports expressing our concern about the City's lack of auditor independence under the new form of government. As stated in IBA Report Number 06-35, we believe that an audit organization's independence will and should be its most distinguishing attribute. In an effort to initiate Charter Review Committee discussion related to auditor independence, the IBA has extracted the following bullet points for your consideration:

- The United States Government Accountability Office (GAO) defines *independence*, in their Generally Accepted Government Audit Standards (GAGAS), as independence from management. In the City's new form of government, the Mayor controls organizational management.



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Attachment 2

- The GAO further states that “the audit organization and the individual auditor, whether government or public, should be free both in fact and appearance from organizational impairments to independence.”
- The IBA believes that the greatest risk of impairment or undue influence to City’s audit organization is the current structure whereby the auditor reports to management whose activities he is charged with auditing.
- In their recommendation for an independent Auditor General (now referred to as an internal auditor), Kroll makes the following statement: “Currently, the functions of accounting and financial reporting are combined with the function of internal auditing in the Office of the City Auditor and Comptroller; in substance, the auditor audits his own work. Such a structure lacks the requisite level of independence widely viewed as essential for a sound financial reporting system.”
- The City’s first Annual Report on Internal Controls, prepared by the former City Auditor and Comptroller and dated January 1, 2006, provided the following about auditor independence: “An auditor’s ‘stock-in-trade’ is her or his opinion. The value of the auditor’s opinion is rooted in the auditor’s *objectivity*. The auditor’s objectivity is rooted in the auditor’s *independence* within the organization. To the extent that an auditor’s opinion is less than objective, the value (and reliability) of that opinion is diminished.”
- The California legislature has codified the necessity for audit independence with Section 1236 of the California Government Code that requires all city and county audit activities and auditors follow the Institute of Internal Auditors (IIA) Professional Practice Standards. The IIA’s Statement of Responsibilities speaks to auditor independence as “essential to the effectiveness of internal auditing.”
- The IIA’s Statement of Responsibilities further specifies that “objectivity is essential to the audit function. Therefore, an internal auditor should not develop and install procedures, prepare records, or engage in any other activity which he would normally review and appraise and which could reasonably be construed to compromise his independence.”
- In a private sector parallel, the Sarbanes-Oxley Act of 2002 addresses auditor independence by adding a “Prohibited Activities” section to the Securities Exchange Act of 1934 that makes it unlawful for an auditing firm providing an audit for a client to contemporaneously provide any non-audit service (i.e., bookkeeping or other services related to the accounting records or financial statements of the audit client) for that same client.

Audit Committee Issues

In the Report of the Audit Committee of the City of San Diego dated August 8, 2006 ("Kroll"), there was a financial remediation recommendation to establish a three-member Audit Committee, with two members from the public and one member from the City Council. Kroll further suggested that the two public members be appointed by the Mayor and confirmed by the City Council. Citing professional best practices in IBA Report Number 06-35, the IBA recommended that the City Council appoint the two public members. After considerable discussion about the appropriate process and composition of the recommended committee, the City Council acted to establish an Audit Committee with the adoption of Resolution R-302279 on January 9, 2007. The City's Audit Committee is comprised of three members of the City Council.

The City Council adopted Ordinance O-19612 on April 24, 2007 to codify the Audit Committee Charter into the City's Municipal Code. The Municipal Code now specifies that the Audit Committee shall provide independent, legislative oversight for the audit work performed by and for the City. The Audit Committee Charter and the City's Municipal Code state that this oversight "shall extend to the City's internal controls over financial reporting; the City's financial disclosures; internal financial audits; and the selection, with appropriate consultation with the Mayor, and monitoring of independent audit firms."

The following bullet points provide information contained within the binder related to some of the issues faced in establishing and defining the role of the City's Audit Committee:

- In their Recommended Practice for 2006, the Government Finance Officers Association (GFOA) states "An audit committee also provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns. By effectively carrying out its functions and responsibilities, an audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management's practices, and that the independent auditors, through their own review, objectively assess the government's financial reporting practices."
- With respect to audit committee establishment, the GFOA further provides "The governing body (4) of every state and local government should establish an audit committee or its equivalent ..." (4) footnote: "For the purposes of this recommended practice, the term 'governing body' should be understood to include any other elected officials (e.g., county auditor, city controller) with legal responsibility for overseeing financial reporting, internal control and auditing, provided they do not exercise managerial responsibilities within the scope of the audit."
- The Association of Local Government Auditors (ALGA) has developed model code or ordinance language for establishing a local government auditor and/or audit committee.

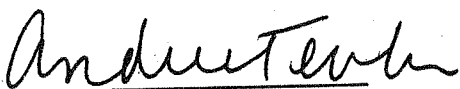
That language specifies that "Audit committee members shall be appointed by the legislative body and all appointees shall be independent of the local government's management and administrative service."

- The American Institute of Certified Public Accountants (AICPA) states "The creation of an effective audit committee function can help a government establish accountability because it can focus specifically on issues related to fiscal accountability. Furthermore, a government audit committee can devote more time to fiscal accountability matters, resulting in greater benefits. For example, government audit committees can improve financial practices and reporting, enhance the internal audit function and enhance the external audit function."
- The National Office of Audit and Accounting (NOAA) issued an Audit Committee Guide for Public Sector Entities which contrasts the role of management with that of the audit committee as follows: "Management has the responsibility to ensure the accuracy of the financial statements and compliance with laws, regulations and agreements. It is the audit committee's function to carry out due diligence by evaluating information from the chief financial officer, program administrator, the internal auditor, and the external auditors to form conclusions."

CONCLUSION

The information provided within this binder is provided as a resource for members of the Charter Review Committee to utilize in discussing the City Charter as it relates to the issue of auditor independence, which is linked to the new role of the City's Audit Committee. The binder is largely comprised of best practices and recommendations from professional auditing, accounting and government associations. In an effort to provide additional perspective, we have included related IBA reports and selected pages from the Kroll consultant report to the City.

The IBA is pleased to be an ex-officio member of the Charter Review Committee. We are interested in the work of the Committee and would be glad to provide you with additional information to support your review. My staff and I stand prepared to assist the Committee, and its Subcommittees, as may be needed. Please feel free to discuss anything of interest with me or a member of my staff in the course of your review.



Andrea Tevlin
Independent Budget Analyst

THE CITY ATTORNEY

CITY OF SAN DIEGO

Michael J. Aguirre

CITY ATTORNEY

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MEMORANDUM OF LAW

DATE: January 23, 2006

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: The Relationship Between the City Offices of the Mayor and the Auditor and Comptroller under the Mayor-Council Form of Government

QUESTION PRESENTED

What is the relationship between the Office of Auditor and Comptroller [Auditor] of the City of San Diego and the Office of the Mayor under the new Mayor-Council form of government?

SHORT ANSWER

Under the Mayor-Council form of government implemented January 1, 2006, the Mayor has the express authority to appoint and dismiss the Auditor. That places the office under the Mayor's supervision. However, the Mayor may not limit or impede the authority or duties given to, or required of, this public office by City Charter or ordinance, federal or state law.

BACKGROUND

On November 2, 2004, the voters of the City of San Diego passed Proposition F, which amended the San Diego City Charter to add Article XV to "test implementation of a new form of governance commonly known as a Strong Mayor form of government." Charter section 250. The five-year trial period of governance is operative January 1, 2006 and continues until December 1, 2010, unless the electorate extends this form of government. Charter § 255. Voters were urged "to elect a chief executive who is accountable for how the City is run, . . . who had the authority to make changes." San Diego Ballot Pamphlet, General Elec. Nov. 2, 2004, argument in favor of Prop. F.

Voters were told that "the Mayor would have the authority to give direction to all City officers and employees, except those in departments and offices recognized in the Charter as being independent . . . The Mayor would be responsible for preparing the annual budget for the

Council's consideration and adoption. . . . The Mayor would appoint the City Manager with Council confirmation. The City Manager would serve at the pleasure of the Mayor. The Mayor would appoint the City Auditor and Comptroller, Police Chief, and Fire Chief, subject to Council confirmation. All other managerial department heads formerly under the City Manager would be appointed by the Mayor and serve at the pleasure of the Mayor." San Diego Ballot Pamp. General Elec. Nov. 2, 2004, the City Attorney's Impartial Analysis of Prop. F.

Part of the system of "checks and balances" created by Proposition F was the new office of Independent Budget Analyst. San Diego Ballot Pamp. General Elec. Nov. 2, 2004, argument in favor of Prop. F. The City Council would appoint the Independent Budget Analyst: "to review and provide budget information to the Council independent from the Mayor." San Diego Ballot Pamp. General Elec. Nov. 2, 2004, the City Attorney's Impartial Analysis of Prop. F.

Charter section XV was effective January 1, 2006, and with its implementation and the election of a new Mayor, questions have arisen about the relationship between the Office of the Mayor and the Office of the Auditor in the new form of governance.

DISCUSSION

I. Charter Changes Impacting the Auditor.

Effective January 1, 2006, the Mayor assumed all executive authority, power, and responsibilities conferred by the Charter upon the City Manager in Article V [Executive and Administrative Service], Article VII [Finance], and Article IX [Retirement of Employees]. Charter § 260 (b). In addition, the Mayor became the Chief Executive Officer of the City of San Diego.¹ Charter § 265 (b) (1).

A. The Mayor's Financial Duties.

The Mayor now serves as Chief Administrative and Chief Budget Officer of the City, assuming the duties and responsibilities of the previous City Manager. As such, the Mayor assumed the duties outlined in Charter section 28:

. . . to supervise the administration of the affairs of the City except as otherwise specifically provided in this Charter; to make such recommendation to the Council concerning the affairs of the City as may seem to him desirable; to keep the Council advised of the financial condition and future needs of the City; to prepare and submit to the Council the annual budget estimate and such reports as

¹ The Charter does not define "chief executive officer." But the title commonly means "The highest-ranking executive in a company or organization, responsible for carrying out the policies of the board of directors on a day-to-day basis." The American Heritage Dictionary of the English Language: Fourth Edition (2000). (<http://www.bartleby.com/61/90/C0289050.html>)

may be required by that body, including an annual report of all the Departments of the City . . . as Chief Budget Officer of the City, [the Mayor] shall be responsible for planning the activities of the City government and for adjusting such activities to the finances available. To this end he shall *prepare annually a complete financial plan* for the ensuing year and shall be responsible for the administration of such a plan when adopted by the Council. He shall be charged with the *bringing together of estimates covering the financial needs of the City*, with the checking of these estimates against the information relative to past expenditures and income, with *the preparation of the budget document and supporting schedules and with the presentation of the budget to the Council.* (Emphasis added).

In addition, the Mayor is to cooperate fully with the Council and the Office of Independent Budget Analyst, including supplying requesting information concerning the budget process and fiscal condition of the city to the Council and the public. Charter § 265 (b)(14) (15).

B. Mayor's Supervision of Officers Responsible for Financial Matters.

With the broad administrative and fiscal responsibilities came the Mayor's authority to appoint and dismiss the City officers responsible for City financial matters. He may appoint and dismiss the City Treasurer as could the previous City Manager. Charter §§ 260 (b), 29, and 45. The amendments to the Charter made no changes in the duties and responsibilities of the office of the Treasurer, which include maintaining custody of and disbursing City moneys, and recording all receipts and expenditures. Charter § 45. Similarly, the Charter transferred the authority to appoint the Auditor from the City Council to the Mayor, subject to Council confirmation, and provides that the Mayor may remove the Auditor subject to appeal to the City Council. Charter §§ 265 (b)(10) and (11). However, the Charter made no changes to the duties of the Auditor. The Auditor remains the "chief fiscal officer of the City" according to Charter section 39, with all of the previously-existing duties and powers.

In assuming the responsibility for the proper administration of all affairs of the City, Charter section 29 gives the Mayor the power to appoint and remove:

. . . all officers and employees in the administrative service of the City under his control; but the [Mayor] may authorize the head of a Department or officer responsible to him to appoint and remove subordinates in such Department or office. Appointments made by, or under the authority of, the [Mayor], shall be on the basis of administrative ability and of the training and experience of such appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed sixty days. . . Charter § 29.

Under the new form of government, the Office of Auditor and Comptroller was expressly transferred to the new executive branch of City government and the officer holding the position

of Auditor now reports to the highest ranking officer within that branch, the Mayor. However, the Auditor's independent duties, and powers under the City Charter and San Diego Municipal Code have not changed. To help ensure the Auditor's independence, the Charter provides a "checks and balances" by allowing the Auditor to appeal his removal to the City Council. Charter § 265 (b) (11). Nonetheless, the Mayor's responsibilities with respect to the City's finances and budget require that he exercise supervisory authority over the Auditor, subject to other laws that require the Auditor's independence when performing his or her duties.

II. The Auditor's Authority and Responsibilities Remain Unchanged.

The Office of Auditor is created by the City Charter and the Charter provides the City Council with only limited authority to transfer to others those matters the office might handle that "do not relate directly to the finances of the City." Charter § 39. Accordingly, the Department may not be changed, abolished, combined or rearranged except by a charter change. Similarly, no other Department may be created that would duplicate the duties the charter places upon the Auditor that do relate directly to the finances of the City. *See*, Charter § 26; *Hubbard v. City of San Diego*, 55 Cal.App.3d 380, 387-388 (1976).

In addition, the Mayor would exceed his authority should he impede the performance of the mandatory duties and responsibilities placed upon the Auditor as a public officer by the City Charter, ordinance, or state or federal law. *See, Lockyer v. City and County of San Francisco*, 33 Cal.4th 1055, 1079-1080 (2004). A Mayor in the new form of government only has the authority that is expressly or impliedly conferred upon him or her by a charter. 3 McQuillin, Mun. Corp. (3rd Ed, 2001) § 12.43, p. 266; *see, Bartlett v. Bell*, 58 Cal. App. 357 (1922) [Mayor has no power to compel Auditor to act in matter to benefit a third party].

The duties required of and the power provided to the City Auditor by the City Charter remain intact through the governance change. Charter section 39 specifies the duties of the Auditor and provides, in relevant part, that:

... The City Auditor and Comptroller shall be the chief fiscal officer of the City. He shall exercise supervision over all accounts, and accounts shall be kept showing the financial transactions of all Departments of the City upon forms prescribed by him and approved by the City Manager and the Council. He shall submit to the City Manager and to the Council at least monthly a summary statement of revenues and expenses for the preceding accounting period,² detailed as to appropriations and funds in such manner as to show the exact financial condition of the City and of each Department, Division and office thereof. No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the Auditor and Comptroller shall certify in writing that there has been

² Charter section 89 also requires the Auditor submit similar monthly statements to the Council.

made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof.³ He shall *perform the duties imposed upon City Auditors and Comptrollers by the laws of the State of California, and such other duties as may be imposed upon him by ordinances of the Council*, but nothing shall prevent the Council from transferring to other officers matters in charge of the City Auditor and Comptroller which do not relate directly to the finances of the City. He shall prepare and submit to the City Manager such information as shall be required by the City Manager for the preparation of an annual budget. He shall appoint his subordinates subject to the Civil Service provisions of this Charter. (*Emphasis added*).

Other Charter-mandated duties include the joint determination with the City Attorney of the proper form, arrangement, and itemization of the annual appropriation ordinance; and determination of the "percentage change in price index" (Charter § 71); the keeping of accounts for each item of appropriation; and the transfer of unexpended funds from these accounts to the general fund upon completion of the project or at the end of one year. Charter § 72. If the Council fails to include adequate funds in the appropriation ordinance to cover the Mayor's estimate of the City's debt, or the amount actually required to cover the debt, the Charter requires the Auditor to set up an account for the full amount the Mayor estimates or the amount required to cover the debt, and to transfer tax revenue into that account. Charter § 74. The Auditor has the responsibility to examine all payrolls, bills and other claims against the city (except claims for damages) and has the discretionary authority to investigate such claims (Charter § 82); he is responsible for issuing the checks to pay claims against the City that have been approved by the heads of the Department or offices incurring the debt (Charter § 83); he receives reports from all City officials who collect and deposit money for fees, permits, licenses, inspections, services, taxes, and other municipal charges (Charter §§ 86 and 88); and he determines the appropriate form of accounts to be used by all officers and Departments of the city that receive or disburse City moneys (Charter § 87).

The Auditor must include in his records the cost or value of all City assets; present a balance sheet containing that information to the Mayor-Manager; and publish that information in his annual report. Charter § 112; SDMC § 22.0708. He must audit the accounts of any officer who dies, resigns or is removed from office, and report the results to the Mayor-Manager and Council. If the person is found indebted to the City, the Auditor must notify the Mayor and Council. Charter § 111. And the Auditor has authority to refuse to issue a warrant for a retirement allowance, if, in the Auditor's opinion, the allowance has been granted in contravention of Charter Article IX or ordinances passed under its authority. Charter § 144.

³ Charter section 80 also requires the Auditor first certify there are adequate unencumbered funds in the Treasury to cover any contract, agreement, or obligation involving the expenditure of funds before the Council makes such contracts or orders.

The Auditor has additional responsibilities and powers codified in section 7, Article 2 of the San Diego Municipal Code. For example, the Auditor:

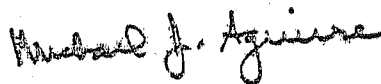
... shall, at any time, have power to examine, check and audit the accounts and records of any commission, board, department, division, office, or employee of the City; to require an accounting for all cash revenues of the City; to make and certify to an actual count of cash and securities, and to prescribe, govern and control the movements, or transfer of all cash revenues, or securities, to the custody of the City Treasurer." SDMC §22.0701.

The Mayor and the Auditor must jointly prepare and submit an annual report to the City Council and the Financial Reporting Oversight Board on the status of the City's internal financial controls, with the necessary joint certifications. SDMC § 22.0708. The Auditor also has separate duties associated with the City's Comprehensive Annual Financial Report (CAFR). SDMC §§ 22.0709, 22.0710. Accordingly, the Auditor has many responsibilities and duties outlined in the Charter, City ordinances, and state laws in addition to the reporting obligations to the Mayor and City Council.

CONCLUSION

Under the new Mayor-Council form of governance, the Auditor reports to the Mayor as Chief Executive Officer of the City of San Diego. Under the Charter, the Auditor is required to support the Mayor in his obligation to provide a budget to the City Council and to provide such other information related to the City's finances and the administration of the City. However, the Auditor does retain some independence in that the Mayor may not limit or impede the authority or duties given to or required of this public officer by Charter, ordinance, federal or state law. Finally, the Auditor's right to appeal his removal to the City Council provides a check and balance on any improper interference with the Auditor's duties and responsibilities.

Respectfully submitted,



MICHAEL J. AGUIRRE
City Attorney

JK:CMB:jk
ML-2006-2



**THE CITY OF SAN DIEGO
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT**

Date Issued: October 18, 2007

IBA Report Number: 07-102

Rules Committee Agenda Date: October 24, 2007

Item Number: 1

Subject: Charter Review Committee Recommendations

OVERVIEW

As detailed in the Final Report of the 2007 San Diego Charter Review Committee, the group was created by the Mayor and charged with specific tasks related to Charter review approximately six months ago. One or more representatives of the Office of the IBA attended each meeting of the Charter Review Committee and its subcommittees in order to provide research and information, give input on behalf of our office, and observe the process and dialogue in order to inform the comments we would make to the City Council.

In this report, we will only discuss items recommended in the Charter Review Committee's Final Report for which the IBA has taken a position and/or wishes to make additional information available. The following are the Committee's recommendation areas which will be discussed in this report:

- Sunset Revision
- Eleven-Member City Council
- Veto Override
- Independent Budget Analyst
- Chief Financial Officer
- Audit Committee and City Auditor
- Balanced Budget

In addition, the IBA will make another suggestion, on the matter of Mayoral appointment of a City Manager/Chief Operating Officer, in this report.



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Attachment 3

FISCAL/POLICY DISCUSSION

Sunset Revision

The Charter Review Committee has recommended that the trial period for the Strong Mayor form of government be extended by four years and that it shall be made permanent unless other action is taken. The IBA wishes to point out that, although the committee has characterized this as an extended trial period, it is actually being made permanent through this proposal. Generally in a trial, a decision on the question is required at the end of the trial period. This provision does not require the question to be called at the end of the trial, which effectively means it is permanent if passed by the voters next year. The recommendation does allow that the voters may act to alter or terminate this at any time, however this is a right of the citizens regardless of the permanent or temporary nature of any provision in the Charter.

The IBA suggests it would be more candid to let the public know that this is effectively making the Strong Mayor form permanent, if this recommendation is approved. Alternately, if a trial period is still desired, a provision for automatic placement on a prior ballot should be included. The ballot should be provided for sufficiently in advance to ensure that the result may be certified by the Secretary of State prior to the actual expiration of the trial period.

Eleven-Member City Council

The IBA takes no position on the recommendation to expand the City Council. However, as readers will note, the recommendation is not specific as to when the expansion should take place. During discussion, some members of the subcommittee and committee expressed concerns about the cost of redistricting in the near future (among other concerns) when the decennial redistricting as required by the Charter would follow soon after. However, some members supported an immediate redistricting process notwithstanding the added cost and effort. Therefore, the committee ultimately decided to let the City Council choose the most appropriate time to perform the redistricting necessary for expansion.

The IBA has recently attempted to quantify the actual cost of a redistricting effort. Based on the 2002 Annual Budget, the City budgeted almost \$162,000 for the 2000 Redistricting Commission (RC), which comprised two part-time staff at approximately \$72,000 and non-personnel expense. In addition, the IBA is aware that the RC utilized the services of a Senior Planner and that the City Clerk provided Records to take minutes. These costs are not captured in the allocation above and there may be further staff or material support that the IBA has been unable to identify. The IBA believes this information can be valuable in considering the timeframe for redistricting to expand the Council, should this recommendation be forwarded. However, we would note that these are budgeted, not actual costs. The IBA was unable to find records for the actual costs associated with the 2000 RC.

In addition, the 2000 RC made a recommendation for future RC's budget requirements in their final report in 2001. The 2000 RC suggested the budget should include funding for three full-time staff, consultants, legal counsel, and various supplies and equipment. This closely mirrors a proposal made by the 2000 RC in December 2000 (Attachment I). The 12 month budget proposed \$750,000 for five staff, consultants and related costs. The IBA estimates that a proposal for just three staff could be reduced significantly. However, considering the increase in cost for salaries and materials since 2000, we suggest that the cost of supporting an RC effort, as envisioned by the 2000 RC, could still be between \$650,000 - \$700,000.

The operating costs for the additional districts may be as much as \$3 million annually, if current district budgets are retained. As discussed by the committee, the cost of this proposal is a trade-off for the additional representation citizens would enjoy.

Veto Override

During the discussion of increasing the threshold for overriding the Mayor's veto, the committee considered linking the issue to the expansion of the City Council. This proposal ultimately failed to garner a majority of votes amongst the subcommittee or committee. However, the IBA believes that further discussion of this issue may be warranted, both due to the split vote at the committee and due to the unique situation it would create for veto override. As described in the report, implementing the two-thirds veto override for an eight-member City Council would in reality require a three-quarters override. While two-thirds results in percentages greater than 66.7% in some cities, as the report references, a 75% requirement would be a uniquely high hurdle for regular resolutions and ordinances. Furthermore, for special ordinances that currently require six votes to pass, the override could only be accomplished with seven of eight votes or 85.7%.

The IBA suggests that, if the override and 11 member Council recommendations are approved, the Council may wish to consider hastening the expansion of the Council and linking it to the new override implementation. The expansion of the Council may be accomplished through the redistricting process, as described. Alternately the appointment of a temporary at-large member may be considered until a full redistricting can be completed and new Council Member(s) elected.

Independent Budget Analyst

The IBA supports the language recommended by the Charter Review Committee with respect to this office. The substantive addition recommended clarifies within the Charter that the work of the IBA may include both budgetary and policy analysis, as currently provided by the Municipal Code. We believe that this language clarifies the nature of the independent work performed by the IBA while maintaining the City Council's authority to set powers and duties of the office in the Municipal Code.

The committee also gave some consideration to changing the name of the IBA to incorporate the legislative analysis role of the office, and making the office permanent regardless of the form of government the City may have. Ultimately, the committee has placed it in the category for further study. The IBA would support the permanence of this office if studied in the future, or if taken under consideration for this ballot, recognizing its value in either form of government.

Chief Financial Officer (CFO)

The IBA supports the recommendation of the Charter Review Committee to place the CFO in the Charter and to assign all comptroller duties to this position as part of the proposed split of the Auditor and Comptroller's office and the appropriate assignment of audit duties to the City Auditor (see discussion below). Note that under this amendment, the CFO shall be appointed by the City Manager (Mayor) and confirmed by the City Council, which is not the case at this time. With this amendment, the City Treasurer, a subordinate of the CFO, will no longer require confirmation by the City Council, which the IBA finds reasonable.

Audit Committee and City Auditor

As the IBA has recommended since our first report on the topic (IBA Report 06-35 dated 8/30/06) we believe the Audit Committee and City Auditor should be considered together, as they comprise the entire Audit Organization of the City. This will ensure that the most independent and effective infrastructure is in place to fulfill this purpose, one of the most important oversight functions in City government.

The recommendation by the committee is to establish a five member Audit Committee, two members of which are City Council Members (one of whom shall serve as chair) and three members are citizens with financial expertise, appointed by the Council. The committee has included a screening process that closely mirrors that proposed by the IBA in our original Report 06-35, for the appointment of these citizen members. The screening committee shall be comprised of one member of the City Council, the CFO, City Attorney, the IBA and two outside financial experts, who will then provide a pool of qualified candidates for Council consideration.

The City Auditor is appointed by the Mayor, in consultation with the Audit Committee, confirmed by the City Council and reports to the Audit Committee. The City Auditor shall be appointed for a 10 year term and may be terminated by the Audit Committee with a right to appeal to the City Council.

The recommendations forwarded by the committee mirror those by the IBA in our original report 15 months ago, except that the Audit Committee has been expanded from three to five members. The IBA continues to support this model for the Audit Organization for the City of San Diego.

Balanced Budget

The IBA supports the recommendation of the Charter Review Committee to clarify and strengthen a balanced budget requirement in the City Charter. The IBA worked with the subcommittee and the CFO to propose and scrutinize potential language for consideration. The language ultimately approved by the committee, which was proposed by the IBA and CFO, recognizes the roles of both the executive and legislative branches in the budget process and ensures that a balanced budget is adopted and maintained throughout the fiscal year.

City Manager/Chief Operating Officer

At the meeting of October 15, 2007, the City Council confirmed the Mayor's appointment of Jay Goldstone as Chief Operating Officer for the City of San Diego. During the discussion, a point of possible conflict in the City Charter was raised. While Article XV confers all the duties of the City Manager on the Mayor, it later allows the Mayor to appoint, direct and dismiss the City Manager (Section 265(b)(7) – (9)). Because this creates confusion, and because the current Mayor does not use the term City Manager, we suggest that the Council may wish to replace the words "City Manager" in the aforementioned sections with "Chief Operating Officer" or a similar term.

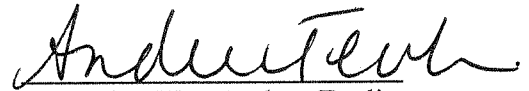
CONCLUSION

In this report, the IBA has noted support for recommendations of the Charter Review Committee including language for the IBA, CFO, Audit Committee and City Auditor, and the balanced budget requirement. While the IBA takes no position on the recommendation to expand the City Council, we have attempted to provide some historical information about the cost of the last redistricting effort and suggestions for expanding the Council in light of the increased veto override proposal. Finally, the IBA has made two recommendations for modifications:

1. If approving the committee's sunset revision proposal, include language that acknowledges that the Strong Mayor form of government is being made permanent. If there is a desire to keep a true trial period, provide for automatic placement on the ballot prior to the expiration of the period.
2. Consider amending the Section 265(b)(7)-(9) references to a City Manager by the Mayor to appointment of a Chief Operating Officer to reduce confusion with previous articles.



Penni Takade
Deputy Director



APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: December 15, 2000

TO: Honorable Mayor and City Councilmembers

FROM: George I. Loveland, Acting Assistant City Manager

SUBJECT: Year 2000 Redistricting Commission Budget

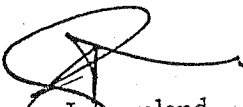
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03 DEC 21 AM 10:24
SAN DIEGO, CALIF.

On October 6, 2000 seven commissioners were appointed to the 2000 Redistricting Commission, whose task is to redistrict the City into eight Council districts, each containing one-eighth of the City's total population to the extent that is practical. According to the City Charter the Commission must adopt a budget within 60 days of appointment, which includes a Chief of Staff who will serve the Commission, and the use of existing City staff to the extent possible. The budget is submitted to the Appointing Authority, which is a panel of three retired Superior Court Judges, for approval and then to the City Council for consideration. The Council must appropriate adequate funds to the Commission and to the City Clerk to carry out their duties.

At this time, the Commission has submitted a one-year budget totaling \$750,000 to the Appointing Authority for review on December 21, 2000. Based on direction provided by the Redistricting Commission, City staff assisted in the preparation of the proposed budget. Given staffing and salary guidelines, the budget outlines City positions that are comparable to the Chief of Staff, Assistant to the Chief, and three staff members. For example, the Chief of Staff's proposed salary and benefits is comparable to a Department Director. The budget includes support costs for the five positions requested, such as office space rent, furniture and computer equipment, as well as costs to perform the redistricting tasks, such as City staff support, mapping and graphic services, meeting expenses, and office supplies.

Attached for your advanced review is copy of the Redistricting Commission Proposed Budget. Also attached is the Chief of Staff job announcement that is currently being advertised in local publications, such as the San Diego Union-Tribune, the San Diego Asian Journal, Voice and Viewpoint, La Prensa, El Sol, Jobs Available, Uptown Publication, and Filipino Press.

Respectfully Submitted,



George I. Loveland

GL/klm

Attachments: 1. Redistricting Commission Proposed Budget
2. Chief of Staff Job Announcement

City of San Diego Year 2000 Redistricting Commission Proposed Budget

	12 Month Budget	18 Month Budget	Assumptions
1.00 Chief of Staff	143,490	215,235	Average salary (\$113,941) and benefits (\$29,549) comparable to a Department Director
1.00 Assistant to Chief of Staff	104,286	156,429	Average salary (\$81,153) and benefits (\$23,133) comparable to a Program Manager
3.00 Staff Members	229,785	344,678	Average salary (\$60,480) and benefits (\$16,115) comparable to a Senior Mgmt Analyst
Consulting/Legal Services	50,000	50,000	Legal Services beyond City Attorney support or other Consulting Services if needed
As-Needed Interpreter Services	5,400	8,100	Interpreter services for meetings, if necessary
City Clerk Support	20,000	30,000	City Clerk support and legislative recorder services
City Attorney Support	20,751	31,127	4 hours per week/2.24 positions
Manager's Office Support	9,804	14,706	4 hours per week/1.00 position
Office Supplies	5,000	7,500	Estimate \$1,000 per person
Postage	1,020	1,530	Assumes 3,000 pieces of mail per year at \$0.34
Transportation Allowance - Parking	2,250	3,375	Parking Stamps for Commissioners at the Concourse Parkade
Transportation Allowance - Mileage	950	1,425	Mileage reimbursement for 5.00 staff (city employees). \$.38/mile @ 500 miles/person
Advertising/Noticing	2,500	3,750	Advertising and noticing for events and meetings
Recording Equipment & Supplies	664	716	Recorder and two tapes per meeting
Print Shop Services	5,000	7,500	Photocopy costs, printing, graphic services, and preparation of informational brochures
Mapping Services	50,000	50,000	Mapping and overlay services
Redistricting/Mapping Software	7,000	7,000	AutoBound redistricting software for 2 systems @ \$3,500 each
Meeting Expenses	1,025	1,350	Refreshments for 26 Commission mtgs/year and 15 community mtgs @ \$25/mtg
Rent	19,035	28,553	225 sq.ft. per person @ \$1.41 sq.ft./month (includes gas, electric, common areas, etc.)
Office Furniture	8,700	8,700	5 desks, 5 exec chairs, 8 side chairs, 5 filing cabinets, 5 bookcases, 5 calculators
Modular/Cubicle Furniture	4,000	4,000	Three 8x8 cubicles (panels only, no furniture) clustered together with electrical power
Network Ready Computers	13,750	13,750	Computer, monitor and software installation for 5 staff people
Printer Toner Cartridges	2,000	2,000	Mid-range Laser Printer
Printer Machine	1,000	1,500	Assume need to replace 10/year @ \$100 each
Fax Machine	1,225	1,225	Mid-range Fax Machine
Phones	750	750	5-six button line phones, purchase and installation
Scanner	11,542	17,313	Mid-range Scanner
Network Access Charges	850	1,275	Yearly City access charges for Computers, Printer, Phones, Fax and Scanner
Hardware Maintenance	3,950	5,925	Estimate \$170 per computer
SDDPC Application Support/Labor	357	536	Estimate 10 hours/year per PC @ \$79/hour
Cell Phone	153	153	One cell phone for Chief of Staff (free phone, \$29.75/month)
Pagers	25,000	25,000	Two pagers for Chief of Staff and Assistant Chief (Apollo Pocsag alpha-numeric)
Contingency Reserve			For personnel negotiations or non-personnel emergencies (approx 3% of 1 year budget)
TOTAL	\$ 752,237	\$ 1,046,099	

Note: If needed, a Laptop and Proxima Projector can be borrowed from the City's Information Technology Dept.



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

CHARLES G. ABDELNOUR, J.D.
City Clerk, C.M.C.

Office of the
CITY CLERK
533-4000

December 1, 2000

Page 1 of 2

The Redistricting Commission for the City of San Diego is accepting applications for the position of:

Redistricting Commission
Chief of Staff

BACKGROUND INFORMATION

San Diego is the sixth largest city in the United States with a population of over 1.2 million citizens. San Diego operates under a Council-Manager form of government. The Council consists of a Mayor elected at large and eight Council members elected from districts.

The Redistricting Commission, subject to the provisions of the City Charter relating to referendum and initiative powers of the people, has the sole and exclusive authority to adopt plans which specify the boundaries of districts for the City Council. The Redistricting Commission must abide by San Diego City Charter, Article II, Section 5.1

THE POSITION

There is currently one vacancy for Chief of Staff. The position reports directly to the Redistricting Commission and will perform the following duties:

- (1) Assist the Redistricting Commissioners and provide technical and demographic assistance to analyze and formulate redistricting plans and maps.
- (2) Compile databases of election returns and demographic characteristics at the precinct/census tract level or other unit of analysis, as needed.
- (3) Compile expert reports, studies and court findings pertaining to redistricting.
- (4) Compile cases, statutes, resolutions, reports, learned treatises, etc. reflecting the existence of past and continuing discrimination in related to redistricting.
- (5) Produce informational/educational materials relevant to redistricting.
- (6) Work with the City Attorney's Office to obtain legal assistance where necessary to insure compliance with the Constitution, Voting Rights Act, Brown Act, and City of San Diego Charter.
- (7) Select, train and supervise subordinate staff.

NOTE: Length of employment is from February 2001 until the redistricting plan adopted by the Commission becomes effective and any and all legal and referendum challenges have been resolved.



Attachment 3



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

CHARLES G. ABDELNOUR, J.D.
City Clerk, C.M.C.

Office of the
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533-4000

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QUALIFICATIONS

The ideal candidate will have the following:

- Excellent verbal communication, writing and computer skills.
- Strong knowledge of the City's budget process.
- Strong management/supervisory skills.
- Ability to handle multiple assignments and work well under pressure.
- Be a self-starter with a high degree of initiative.
- Good judgement, a high degree of political acumen and effective interpersonal skills.
- Ability to deal with public officials, community leaders, the general public and others in a tactful manner.
- A working knowledge of the City of San Diego and it's diverse communities.
- A strong background in municipal government is highly desirable.
- Relevant experience, education and training which would provide the candidate with the knowledge, skills and abilities required to perform assigned duties.

COMPENSATION

- Salary to be negotiated and is contingent on qualifications.
- Generous benefits package available including various retirement savings, health insurance and life insurance options.

SELECTION PROCESS

Those interested in applying for the position should forward a letter of interest, current resume, three writing samples, and the names and telephone numbers of three professional references to: City Clerk's Office, Attn: Bonnie Stone, Elections Analyst, 202 C Street, San Diego, CA 92101 no later than 5:00p.m. on Monday January 15, 2001.

After a review of the submitted materials, a select number of candidates will be invited to participate in an interview.

The City of San Diego is an Equal Opportunity Employer.



Attachment 3
BRINGS US ALL TOGETHER